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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 412.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., *Appellant*,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA, *Appellees*.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

REPLY BRIEF FOR APPELLANT.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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There is presented here a simple question of construction of two provisions of an Act of Congress relating to the return of property taken and held by the Alien Property Custodian during the war. These two provisions are Section 9 (a) and Section 9 (b) of the Trading with the Enemy Act.

Section 9 (a) provides for the return of any property taken and held by the Alien Property Custodian

but which actually belonged to any person, including a corporation, *not an enemy*. The reason and purpose of it are obvious.

The Trading with the Enemy Act was concerned with the taking over of *enemy property* in America. It did not contemplate the seizure and retention of *non-enemy property*. Consequently, it carefully provided, in original Section 9, and the later Section 9 (a) containing the same terms, for the *return of all non-enemy property* which may have been mistakenly seized. It particularly defined the word "enemy" as used in the act, and also the words "ally of enemy." "Ally of enemy" merely referred to one who bore the same relation to the states allied with Germany (such as Bulgaria and Turkey) as "enemies" bore to Germany and Austria-Hungary, and the term need not be further noticed. "Enemies" included, not only nationals of enemy countries, but those who were nationals of neutral countries but did business in enemy territory. The word "enemy" was defined both as to individuals and as to corporations, and an enemy corporation was one that was incorporated in enemy territory, or, if incorporated elsewhere, did business in enemy territory. The one prerequisite to a return of property under 9 (a) (and original Section 9) was and is a showing that the claimant *was not such an "enemy" as was defined in the Act.*

The appellant corporation (plaintiff below) was, at the time its claim was filed, and is now, strictly within the terms of the original Section 9, and the present Section 9 (a), for it was and is a corporation of Switzerland and did not do business within enemy territory or the territory of allies of enemies. It made

its claim and filed its bill under the provisions of Section 9 and Section 9 (a).

Section 9 (b) on the other hand (passed long after the cessation of hostilities) is not concerned with the non-enemy character of the claimant, and does not require, as a prerequisite to the return of property, a showing that the claimant is not an "enemy or ally of enemy." It simply selects certain classes of owners of alien property, each class separately numbered, and particularly described (originally 8 classes in the Act of 1920, and 11 classes in the Act of 1923) and authorizes and permits the President to return any property that may have been taken from one coming within any one of those classes, and without any claim of "non-enemy" status. Among the classes so described, are women who had married Germans, certain consular officers, and also certain corporations (even corporations of Germany and corporations which had been doing business in enemy territory) whose stockholdings or control were of a certain prescribed character.

The two sub-sections (a) and (b), can easily stand together, and both can be enforced, as even a casual reading of their provisions will demonstrate. Each has definite provisions which can be applied without encroaching on the other. There is no conflict between them, and full effect can be given to all the words of each, without doing violence to the language or spirit of either.

Sub-section (a), as originally enacted (Section 9 of the Act of 1917), was a plain unambiguous provision and its meaning was undoubted. It is continued in force in exactly the same terms in the present law.

Sub-section (b) does not purport to take away any

rights carefully given to non-enemy owners of alien property in the original Trading with the Enemy Act. It contains no words of negation applicable to original Section 9. In this regard its language is clear and the construction obvious. If there were any doubt it would be removed by observing the deliberate re-enactment by Congress of the provisions of original Section 9 in the same law and at the same time, exactly as those provisions stood before.

On the other hand, if there is any room for construction by consideration of matters outside the law itself, then it must be observed that all the aids to interpretation—the committee reports, the hearings, the recommendations of the Attorney General and the communications of the Secretary of State, at whose instance the sub-section (b) was enacted—all point in one direction. They all show unequivocally and indisputably, that the purpose and intent were *to continue* by re-enactment in the amended Act, *all the rights of non-enemy claimants* given by original Act "identical with the provisions of Section 9 of the Trading with the Enemy Act" and containing "the same provisions for relief of any person not an enemy or ally of enemy, as those terms are used in that Act" *and to enlarge* (in the new sub-section (b)) the list of those who would be permitted to receive back their property, *by adding* to those already provided for as non-enemies, certain other claimants who did not need to show non-enemy character.

Nor is any different purpose or intent of sub-sections (a) and (b) to be spelled out of other provisions of the Act. Sub-section (d) contains a provision giving personal representatives of deceased claimants

certain rights; sub-section (e) contains a restriction (expressed in plain and emphatic language) on all claimants, whether enemy or non-enemy. But the fact that (e) may restrict claimants under (a), as well as claimants under (b), does not show that (a) repeals or limits (b) or that (b) repeals or limits (a). Nor does the enlargement of rights in (d) show that (a) enlarges (b), or (b) enlarges (a). This seems too clear for argument.

Sub-section (a) can be enforced in exact accordance with its terms, without lessening or changing one particle, the enforcement of sub-section (b); so sub-section (b) can be enforced without lessening the enforcement of sub-section (a). The one, therefore, does not mean to repeal or limit the other.

And yet the case of the appellees rests on the proposition that the rights given to claimants by the original Section (9) of the Act (continued in 9-a) can no longer be asserted after the enactment of sub-section (b). And, particularly as applied to the instant case, that a non-enemy corporation, which cannot comply with the provisions of sub-section (b) can no longer avail itself of the provisions of sub-section (a).

The gist of this argument is found in Brief for Appellees (in No. 343, at page 6, and in No. 412 at page 5). To understand this argument it should be explained that sub-section (a) and sub-section (b), as well as other sections of the Act, deal with all the property in the hands of the Alien Property Custodian, however secured, whether by voluntary transfer, or by seizure. Sub-section (a) speaks of *any* person claiming "*any* property" "conveyed, transferred or seized * * * by the Alien Property Custodian." Sub-section (b) uses

the expression "in respect of all property conveyed, transferred or seized, etc.," and says that the President may return it to certain specified and selected claimants. Of course, neither sub-section meant completely to dispose of all the property in the hands of the Alien Property Custodian, but did mean that, *out of all the property, or in respect of all the property,* certain parts must be or might be returned. But counsel for appellees in the brief (in No. 412 at p. 5, and in No. 343, at p. 6) seizes upon the word "all" in sub-section (b) and deduces from it the conclusion that Congress meant sub-section (b) to remain the only provision for the return of any property, and that no right was any longer given by (a) because (b) covered "all" the property. At p. 6 of Brief for Appellees in No. 343, it is said:

> "Moreover, and here we think is the insurmountable difficulty in the path of appellant, the application of sub-section (b) is not, as appellant urges, only to such property of *enemies or allies of enemies* as has been seized but *'in respect of ALL money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder.'* "

The trouble with this argument, aside from attributing a wholly unintended meaning to an introductory phrase in a statute, is that it *proves too much!*

If sub-section (b) was meant to be the only provision disposing of any property, then original section 9 was nullified and no longer in force. And yet Congress very carefully and particularly re-enacted the original Section 9 as sub-section (a) in the same broad and inclusive language, and made it the very first part

of the new Act. The appellees' contention makes sub-section (a) mean nothing whatever.

Again, if sub-section (b) is the entire provision for the return of any property, then other provisions such as sub-sections (d) and (e) are inoperative. Further if the particular mention of any class in sub-section (b) excludes all others of that class, then a woman who was non-enemy within sub-section (a) could no longer claim, unless she could show she had been married to a German prior to April 6, 1917, which is absurd!

But the answer to the argument of counsel for appellees is not hard to find in sound principles of interpretation of statutes. It is, indeed, suggested by the very rules of construction which counsel invokes and by the very cases cited in support of them.

At page 8 (in Brief in No. 412), counsel says of section 9: "It must be construed as a whole. * * * All parts of the section must be construed together." He neglects to add, however, another part of the rule, equally important—and "*every clause in a statute should have effect and one portion should not be placed in antagonism to another.*" It is this rule of construction which the contention of counsel for appellees so clearly contravenes. No better demonstration of this can be found than is contained in the first case cited by counsel for appellees, *which emphatically repudiates the precise reasoning* which counsel for appellees now employs. That is the case of *United States v. Landram*, 118 U. S. 81.

In that case the Court had before it (as here) two separate provisions of an Act of Congress and counsel for the Government contended that one provision virtually repealed by implication another provision which

had been in an earlier law but had been re-enacted. The two provisions were section 2 and section 5 of the Act of March 1, 1879, amending the laws relating to internal revenue and providing for the compensation of collectors. Sec. 2 provided for allowances for salary and office expenses of collectors "all of which shall be in lieu of salary and commissions heretofore allowed by law," and stipulated that the salaries should be fixed at certain set sums, according to amount of collections, but not exceeding $4,500 as total net compensation.

Section 3314 R. S., previously in force, had provided for commissions to collectors of one-half of 1 per cent on the amount collected, not, however, to increase the total net compensation allowed by law. This provision was re-enacted and became Section 5 of the same Act of March 1, 1879.

Under Section 3314 collectors were allowed their commissions. After the Act of 1879 was passed the commissions were cut off and counsel for the Government contended in this court that collectors were governed by Sec. 2, and could receive salary only and not commissions. Of this contention and the argument of counsel thereon, this Court said:

> "On the passage of the Act of March 1, 1879, the right of the collectors to commissions was for the first time disputed. It seems to us clear that this right was not taken away by that Act. When it was passed section 3314 of the Revised Statutes allowing the commisions was in force. It was a plain, unambiguous provision, whose meaning had not been doubted and which was not open to construction. Being in force, there was *no reason for its re-enactment* by the Act of March 1, 1879, *except to express in a most unmistakable manner*

the purpose of Congress that it should continue in force, and should not be considered as in any way modified by that Act."

"The only ground upon which the appellants try to escape this conclusion is by an argument which amounts to this: that Congress, by section 2 of the Act of March 1, 1879, intended virtually to repeal by implication that part of section 3314 of the Revised Statutes relating to collector's commissions, which, by Section 5 of the same Act, it deliberately, and word for word, re-enacted."

The Court then called attention to the fact that Section 3314 R. S., and Sec. 2 of the Act of 1879 had again been re-enacted in a subsequent Act of 1880. And the Court added:

"But it is not necessary to resort to the Act of May 28, 1880, to sustain the right of the appellee to any part of his commissions. It is a settled rule of construction that 'One part of a statute must be so construed by another that the whole may, if possible, stand: *Ut res magis valeat quam pereat'* (1 Bl. Com. 89); or, as otherwise expressed, that every clause in a statute should have effect, and one portion should not be placed in antagonism to another. *Brooks v. Mobile School Commissioners,* 31 Ala. 227."

After applying the rules of interpretation to Sections 2 and 5, the Court concluded:

"Thus construed, both sections of the statute are given effect without violence to the language or spirit of either. *No construction of the two sections would be so incongruous and unreasonable as to hold that Congress deliberately re-enacted the provision of Section 3314 allowing commissions to the collectors without meaning*

> *anything by it;* for the case of the appellants can not be sustained unless we virtually expunge from the statute book, after it had, *ex industria*, been put there by Congress, the provision allowing to the collectors commissions on taxes collected by the sale of taxpaid spirit stamps."

Here, in the instant case (as in the case of the *United States v. Landram*) we have the controlling feature that Congress, in one clause of the law, re-enacted in identical terms the exact provision under which the rights in question are claimed, and made it a part of the same Act which counsel for the Government contends denies those rights in another clause. That is the insurmountable difficulty in the argument for appellees.

Respectfully submitted,

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